

**THORP REED
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ARMSTRONG**

ATTORNEYS AT LAW SINCE 1895

VIA FEDEX

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: STB Docket No. FD 35653
Santa Cruz County Regional Transportation Commission –
Petition for Declaratory Order /Expedited Consideration Requested

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are the original and 10 copies of a Petition for Declaratory Order being filed on behalf of the Santa Cruz County Regional Transportation Commission ("SCCRTC"). Also enclosed is a disk with the Petition without attachments in Word 2003 format, and the Petition with attachments in .PDF format.

Enclosed in a separate letter is a fee waiver request, together with a check in the amount of \$1400 representing the filing fee that would otherwise be due.

Please time stamp the extra copy of this letter to indicate receipt and return it to me in the self addressed envelope provided for your convenience.

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Pittsburgh

Philadelphia

Wheeling

Wilmington

Princeton

**SURFACE
TRANSPORTATION BOARD**

EMH/c

cc: All persons shown on the Certificate of Service (by email)

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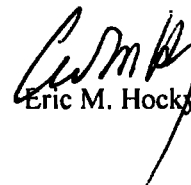
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July 23, 2012

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Respectfully,


Eric M. Hocky

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232596

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35653



**SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION –
PETITION FOR DECLARATORY ORDER**

EXPEDITED CONSIDERATION REQUESTED

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**SURFACE
TRANSPORTATION BOARD**

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**SURFACE
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Dated: July 23, 2012

Attorneys for Santa Cruz County
Regional Transportation Commission

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD XXXXX

**SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION –
PETITION FOR DECLARATORY ORDER**

The Santa Cruz County Regional Transportation Commission (“SCCRTC”) requests that the Board exercise its discretion under 49 USC §721 and 5 USC §554(e) to remove uncertainty, and declare that the transactions described herein among SCCRTC, Union Pacific Railroad Company (“UP”) and Santa Cruz and Monterey Bay Railway Company (“SCMB”) are not subject to the Board’s regulatory authority, and that SCCRTC will not be subject to the Board’s regulatory authority as a carrier, under the Board’s precedents, namely *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 ICC 2d 835 (1991) (“*State of Maine*”) and its progeny.¹

SCCRTC, a public agency created under the law of the State of California, proposes to acquire the physical assets of a 30.957-mile line of railroad (the “Line”) owned by UP between milepost 0.433 and milepost 31.39 in Santa Cruz County, California. SCCRTC does not wish to become a rail carrier, and proposes that it acquire only the physical assets with UP retaining a permanent freight easement which would subsequently be transferred to SCMB that would provide common carrier freight service over the Line.² The SCMB operations would be

¹ SCCRTC recognizes that the Board would still have authority over the railroad line, and over the operator of the line as the freight common carrier. See *Friends of the Aquifer*, STB Finance Docket No. 33966 (served August 15, 2001), slip op. at 4.

² SCMB would separately seek authority, or an exemption, from the Board to operate the Line.

conducted pursuant to an Administration, Coordination and License Agreement (“ACL Agreement”) to be entered into by SCCRTC and SCMB. A condition to closing on the purchase from UP is conditioned on a Board finding that the transaction does not conflict with *State of Maine* and that SCCRTC will not become a carrier as a consequence of the transaction.

SCCRTC has previously been before the Board with respect to its proposed acquisition of the Line. On April 8, 2011, in *Santa Cruz [County] Regional Transportation Commission – Petition for Declaratory Order*, Docket No. FD 35491, SCCRTC filed a similar Petition for Declaratory Order (“First Petition”) requesting that the Board declare that the transactions described therein (the same proposed acquisition as here) among SCCRTC, Union Pacific Railroad Company (“UP”) and Sierra Northern Railway (“SERA”) were not subject to the Board’s regulatory authority, and that SCCRTC would not be subject to the Board’s regulatory authority as a carrier, under the Board’s *State of Maine* precedents. The Board, in a decision served on August 22, 2011 (the “August 22 Decision”) raised questions about the permanence and exclusivity of the freight operating easement reserved by UP, and about whether SCCRTC’s rights under the ACL Agreement would allow SCCRTC to unduly interfere with SERA’s operation of the Line and the ability of SERA to fulfill its common carrier obligations. The August 22 Decision permitted SCCRTC to submit a modified quitclaim deed (with a reserved freight easement) and ACL Agreement to address the Board’s concerns. SCCRTC did so, and in a decision served December 15, 2011 (the December 15 Decision), the Board found with respect to the revised Quitclaim Deed and revised ACL Agreement:

Collectively, these modifications to the proposed Quitclaim Deed and ACL Agreement comport with the *State of Maine* requirements, in that the seller would retain a permanent, exclusive freight rail operating easement and the subsequent third-party easement owner/operator would maintain sufficient control over the line to carry out its common carrier operations. Although the ACL Agreement contains provisions regarding the term of

that agreement, as well as its termination and expiration, these provisions cannot be interpreted or enforced in a way that would affect Sierra's common carrier service. Moreover, as several of the parties' revisions suggest, the Freight Easement preserves Sierra's common carrier rights and obligations as to the Line unless and until the Board approves a transfer of the Freight Easement to another carrier or approves discontinuance of Sierra's service.

Based on this record, we find that nothing in the proposed transaction would affect the continuing validity of Sierra's permanent, exclusive Freight Easement, or would otherwise unduly interfere with Sierra's ability to fulfill its common carrier obligation. Therefore, the proposed transaction is consistent with *State of Maine*, and the proposed acquisition of the assets of the Line by Santa Cruz would not constitute the acquisition of a railroad line under 49 U.S.C. §10901(a)(4) or cause Santa Cruz to become a rail carrier. Under these circumstances, we declare that the transaction, as proposed, does not require Board authorization under 49 U.S.C. §10901.

December 15 Decision, slip op. at 6 (footnotes omitted).

Just one week after the Board issued its decision, Sierra filed a petition to withdraw its verified notice of exemption to operate the line, indicating that it no longer wished to acquire the freight service or provide service over the Line. The Board allowed the withdrawal in a decision served February 16, 2012. *Sierra Northern Railway – Acquisition and Operation Exemption – Union Pacific Railroad Company*, STB Docket No. FD 35490 (served February 16, 2012).

With no third party operator in place, SCCRTC went through a new RFP process to find and select a third party operator so that the acquisition from UP could be consummated. As a result of that process, SCCRTC selected SCMB, a newly formed non-carrier subsidiary of short line holding company Iowa Pacific Holdings, LLC. SCCRTC and SCMB have now negotiated a slightly revised ACL Agreement) (Attachment 1 hereto).³ There are no contemplated changes to the Quitclaim Deed (including the retained freight easement) from UP to SCCRTC. For ease

³ A comparison of the revised ACL Agreement and the ACL Agreement approved in Docket FD 35491 is attached as Attachment 2.

of reference, a copy of the Quitclaim Deed is provided at Attachment 3. The revisions to the ACL Agreement are minor and would not impede the ability of SCMB to fulfill its common carrier obligations.

Since the freight easement to be retained by UP and transferred to SCMB has not changed, and since the ACL Agreement has not been revised in any way to limit or restrict common carrier operations over the line, SCCRTC requests that the Board (1) reiterate its findings with respect to the First Petition in Docket FD 35491, (2) find that the proposed transaction is consistent with *State of Maine*, and (3) find the proposed acquisition of the assets of the line by SCCRTC from UP will not constitute the acquisition of a railroad line under 49 USC §10901(a)(4), or cause SCCRTC to become a rail carrier.

EXPEDITED CONSIDERATION REQUESTED

As previously noted to the Board in the First Petition, SCCRTC is relying upon public funding in the form of grants from the California Transportation Commission ("CTC"). The funding for the purchase has been approved and is currently available. However, additional funding (\$5.3 million) for needed bridge rehabilitation and other improvements has not been secured yet because SCCRTC needs to own the rail line before an allocation request can be submitted to the CTC. SCCRTC's schedule has been delayed by the unexpected withdrawal of Sierra and the need to find a new third party operator. Now that an operator has been located, SCCRTC wants to close as soon as possible so as not to jeopardize any of the available funding. The request must be submitted in September 2012 so as not to lose the funding. Because there have been only minor changes to the transaction and agreements previously reviewed and approved by the Board, SCCRTC does not believe that there should be any significant issues presented by this request. (No adverse comments were filed in the previous proceeding.)

Accordingly, SCCRTC requests that the Board grant the requested relief within 45 days of the date of this filing.⁴

Respectfully submitted,



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Dated: July 23, 2012

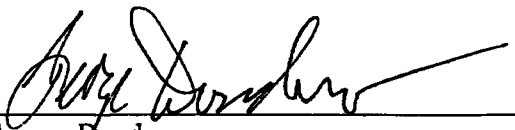
Attorneys for Santa Cruz County
Regional Transportation Commission

⁴ This schedule could be accomplished if the Board published a notice in the Federal Register within 15 days (by August 8), comments were due within 15 days thereafter (by August 23), and the Board issued its decision within 15 days after comments are due (by September 7).

VERIFICATION

I, George Dondero, Executive Director of Santa Cruz County Regional Transportation Commission, verify under penalty of perjury that statements contained in the foregoing Petition for Declaratory Order are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on July 23, 2012.


George Dondero

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused a copy of the foregoing Petition for Declaratory Order to be served electronically on counsel for Union Pacific Railroad Company and for Santa Cruz and Monterey Bay Railway Company as follows:

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Dated: July 23, 2012



Eric M. Hocky

ATTACHMENT 1

**ADMINISTRATION, COORDINATION AND
LICENSE AGREEMENT**

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated _____, 2012, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Santa Cruz and Monterey Bay Railway Company, a California corporation ("Railway").

The Commission purchased the Santa Cruz Branch railroad line (the "Property") from Union Pacific Railroad Company ("UP"), via an August 20, 2010, Purchase and Sale Agreement (the "Purchase and Sale Agreement"); and

UP reserved an easement to conduct common carrier freight railroad operations on and over the Property (the "Freight Easement"), which Freight Easement is set forth in the Quitclaim Deed by which UP, as grantor, quitclaimed all of its right, title and interest in and to the Property to the Commission, as grantee; and

UP has quitclaimed all of its right, title, and interest in and to the Freight Easement to Railway and Railway is the sole freight rail operator on the Freight Easement;

Railway needs a long-term agreement of at least 10 years, covering all facets of railroad operations, in order to justify its investment of time and money needed to conduct such railroad operations; and

Railway and the Commission desire to establish their respective rights and obligations with respect to the Property and the Freight Easement by entering into this agreement.

The parties therefore agree as follows:

1. Definitions

- 1.1 The term "Commission" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.
- 1.2 The term "Coordination Committee" is defined as the committee established by the parties pursuant to Section 11.
- 1.3 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.
- 1.4 The term "Freight Easement" is defined in the introductory paragraphs of this agreement.

- 1.5 The term “Freight Easement Property” is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.
- 1.6 The term “Freight Service” is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.5), transloading freight and dispatching.
- 1.7 The term “Hazardous Materials” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term “Hazardous Materials Laws” means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.10 The term “Loss” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys’ fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Railway; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Railway, and any property in the Commission’s or Railway’s care or custody.

- 1.11 The term "Property" is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.
- 1.12 The term "PUC" is defined as the California Public Utilities Commission.
- 1.13 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.
- 1.14 The term "Railway" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.15 The term "STB" is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.16 The term "Tourist Service" is defined as the transportation of tourists by rail. Tourist Service does not include regularly-scheduled passenger transit or commuter service.
- 1.17 The term "UP" is defined in the introductory paragraphs of this agreement.

2. Commission Grants Rights

- 2.1. Freight Service. The Commission grants Railway the exclusive right and obligation to provide Freight Service on the Freight Easement Property. Railway's rights and obligations to provide Freight Service under this agreement are limited to those set forth in the Freight Easement or in this agreement. Railway may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.
- 2.2. Trackage License. The Commission grants Railway an exclusive license to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Freight Easement Property, buildings and other

fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.

2.3. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this agreement, the exercise of such rights by the Commission may not materially interfere with Railway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB.

2.4. Tourist Service and Other Third-Party Licenses.

2.4.1. Railway Tourist Service. The Commission grants Railway a non-exclusive license to use the Freight Easement Property and Railroad Facilities to provide Tourist Service between Milepost 18.74 in Santa Cruz and the northern end of the Freight Easement Property; provided that prior to the commencement of operations (a) the Commission has approved in writing a detailed plan from Railway describing such Tourist Service, (b) the Tourist Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) Railway has obtained any governmental authorizations required under applicable law for such Tourist Service. Railway's Tourist Service plan shall include, at a minimum, the proposed seasons, dates and times of operation (including a proposed train schedule), a financial plan and a marketing plan. The parties acknowledge that Railway desires to operate Tourist Service over other segments of the Freight Easement Property as well. Commission approval of a plan for Tourist Service over such other segments, if any, will be subject to the Commission's prior receipt of public comments.

2.4.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities (excluding licenses for temporary rail car storage or repairs on the Railroad Facilities), provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Railway's right to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes, (b) do not materially conflict with, and are subject and subordinate to, any other license granted Railway hereunder having a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of Railway's costs (including labor

costs, materials costs, equipment costs — using equivalent rental costs as a proxy for capital and maintenance and repair costs — travel, fuel, contract labor, and appropriate overhead) to maintain and repair the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of Railway in Section 9 and (ii) indemnify and hold harmless Railway and the Commission as to any Loss arising out of or related to licensee's operations.

2.4.2.1. For a period of three years after the effective date of this agreement, any third-party license for Tourist Service between Milepost 20.9 and the northern end of the Freight Easement Property will be deemed to materially conflict with Railway's Tourist Service license, except in the case of special Tourist Service events as described in Section 2.4.2.9. The provisions of this Section 2.4.2.1 are conditioned on the following (all dates are measured following the effective date of this agreement):

- a. Within 6 months: Railway shall submit its plan for its initial Tourist Service to the Commission pursuant to Section 2.4.1.
- b. Within 3 months after Commission approval of initial plan: Railway shall ensure that the Railroad Facilities for its initial Tourist Service meet and are maintained to Class 1 track standards and obtain appropriate FRA and PUC inspections to verify the same.
- c. Within 5 months after Commission approval of initial plan: Railway shall secure all permits and agreements required to operate its initial Tourist Service.
- d. Within 6 months after Commission approval of initial plan: Railway shall initiate its initial Tourist Service.
- e. Levels of Service: Railway's Tourist Service shall carry the following numbers of revenue passengers:
 - I. First Year of Service: 5,000 passengers.

II. Second Year of Service: 10,000 passengers.

III. Third Year of Service: 15,000 passengers.

2.4.2.2. Following the date that is three years after the effective date of this agreement, a third-party license for Tourist Service will be deemed to materially conflict with another license granted Railway hereunder under a plan previously approved in writing by the Commission if the third party (a) operates on a substantially similar portion of the Freight Easement Property and Railroad Facilities covered by the previously-approved license/plan, (b) permits an activity that is substantially similar to the previously-approved license/plan and (c) operates during substantially similar seasons, and on substantially similar days and times of day, as the previously-approved license/plan.

2.4.2.3. If Railway or any third-party licensee ("Tourist Operator") fails to initiate and continue to operate Tourist Service substantially in accordance with the plan approved by the Commission, then the applicable Tourist Operator's operations may, at the Commission's option, lose priority over any other operations, but only to the extent of such failure to operate.

2.4.2.4. If Railway constructs capital improvements to the portion of the Freight Easement Property and Railroad Facilities used by a third party licensee, the Commission shall promptly and reasonably determine (i) the benefit of such improvements to such licensee, (ii) the cost apportionment of such improvements between Railway and such licensee, and (iii) the appropriate amortization period for such improvements (for capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The Commission's contract with such licensee will (i) require the licensee to pay amounts due within 30 days following receipt of written notice from Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. As used in this agreement, the term "capital improvement"

means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.4.2.5. Each third-party licensee's proportionate share of Railway's costs shall be calculated in advance by Railway (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties' relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by such licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection 2.4.2.4.) Such licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Railway shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. The Commission's contract with such licensee will (i) provide that if the actual costs exceed the amount charged to such licensee, such licensee will, within 30 days following receipt of written notice of such reconciliation from Railway pay the additional amount to Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. If the actual costs are less than the amount charged to such licensee, Railway will within 30 days following such reconciliation refund the balance to such licensee.

2.4.2.6. If the Commission, in its discretion, elects to require a lower level of insurance coverage for the licensee than the level of coverage then required of Railway under Section 9, the Commission shall correspondingly lower the limits of coverage required of Railway under Section 9, provided that if Railway elects to reduce the levels of its insurance, it shall also reduce the self-insured retention to the level required of the third-party licensee.

2.4.2.7. The Commission or its designee shall have the right to review, obtain, and copy all books, records,

computer records, accounts, documentation and any other materials (collectively “Records”) pertaining to Railway’s costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. Railway agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Railway further agrees to maintain such Records for a period of three years. The Commission acknowledges and agrees that these Records constitute Railway’s confidential information and shall not be disclosed to any third-party without Railway’s prior written approval, except as otherwise required by applicable law.

2.4.2.8. Railway will reasonably cooperate with any third party holding rights to use the Property, including, without limitation, any third-party Tourist Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities, provided such cooperation does not require significant unreimbursed expense for Railway.

2.4.2.9. In addition to all other rights of Commission under this agreement, and notwithstanding anything to the contrary in this agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.4.2.(a) and (b), provided that such special events will only be deemed to materially conflict with another Tourist Service license granted Railway hereunder under a plan previously approved in writing by the Commission if they operate during the same season, and on the same days and times of day, as the previously-approved license/plan. The Commission will consult with Railway regarding Railway’s willingness and ability to operate such special events.

If the Commission and Railway jointly decide that Railway should operate the special event, Railway will operate the special event for a commercially reasonable all-inclusive fee based on Railway's documented costs (including, without limitation, locomotive, fuel, trainset, labor and overhead costs) plus ten percent (10%). If the Commission elects to have another operator operate the special event, the Commission will pay, or cause to be paid to Railway a fee of \$2,500 per day (the "Special Event Fee"), which fee shall cover all services to be provided by Railway to support an event operated by a third party including, but not limited to, dispatching, inspections, and maintenance (but excluding Railway's provision of any locomotive, trainset, crew, and fuel). The Special Event Fee shall be adjusted annually as of July 1st of each year to an amount calculated by multiplying the Special Event Fee specified above by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (1982-84=100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment, and the denominator of which shall be the CPI for June 2010. Nothing in this paragraph shall preclude the Commission and Railway from negotiating other arrangements for special events (e.g., special events for which there is a different operational or fee structure, including events for which Railway is both the operator and receives all or a portion of the fare revenue).

- 2.5. Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, Railway may enter into agreements with any party for temporary rail car storage or repairs on the Railroad Facilities consistent with the provisions of Sections 2.5.1 and 2.5.2; provided that Railway shall deliver a copy of each such agreement to the Commission promptly following execution thereof. The Commission acknowledges that such agreements are Railway's proprietary information ("Confidential Information") and the Commission shall not disclose any matters contained therein to any person or entity, except as required by law, or to RTC's directors, officers, employees, consultants or advisors. If Commission is requested in any judicial or administrative proceeding, or pursuant to the California Public Records Act

(California Government Code 6250 et seq.), to disclose any Confidential Information, the Commission shall promptly notify Railway of such request so that Railway may resist such disclosure or seek an appropriate protective order or other remedy. If, in the absence of such a protective order or other remedy, the Commission is nonetheless compelled to disclose Confidential Information, Commission may disclose such Confidential Information without liability hereunder.

- 2.5.1. Unless otherwise expressly agreed by the Commission in writing, Railway will not (i) store more than 100 rail cars, (ii) store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Railway may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.
- 2.5.2. Following the earlier of (i) Railway's institution of Tourist Service pursuant to Subsection 2.4.1, or (ii) three years after the effective date of this agreement, Railway shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that materially affects the ability of any third-party Tourist Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights.
- 2.5.3. The provisions of Subsections 2.5.1 and 2.5.2 apply to future storage agreements as well as storage agreements existing as of the effective date of this agreement.

2.6. Investigation.

- 2.6.1. Railway hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for Railway's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written

representations or warranties with respect to the Freight Easement Property or Railroad Facilities.

2.6.2. The Commission acknowledges that Railway cannot make any investigation, or satisfy itself, with respect to how the Property or the public's use of the Property may change following the Commission's purchase of the Property from UP. In the event that any public use of the Property, or illegal activities by third parties, including trespassing, cause any significant economic or operational problems for Railway, Railway may terminate this agreement, provided Railway complies with the provisions of Section 8.3.

2.7. As-Is, Where-Is. Railway shall take the Freight Easement Property in an "as-is, where-is" condition and without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.

2.8. Release. Railway, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Freight Easement Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Freight Easement Property, or any clearance constraints on the Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.

2.8.1. Railway hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Railway or Commission with respect to the operations of Railway, a waiver of any right to subrogation which any such insurer of Railway may acquire against Commission by virtue of the payment of any loss under such insurance.

2.8.2. If any Loss described in Section 2.8 is caused by a third party under contract with the Commission, the Commission shall, at its option, (i) pursue any claim it may have against the third party contractor, or (ii) assign to Railway any such claim, provided that Railway shall not

be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

2.8.2.1. First, Freight Easement Property and Railroad Facilities;

2.8.2.2. Then, railroad equipment.

If Railway commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to Railway and neither party will have any further responsibility under this Subsection 2.8.2 as to such claim. If Railway's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Railway, as provided above.

2.8.3. The provisions of this Section 2.8 shall survive the termination or expiration of this agreement.

2.9. The rights granted by the Commission under Sections 2.1 - 2.5 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. Limitation and Subordination of Rights Granted

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose that is not inconsistent with this agreement. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to Railway for compensation or damages; provided, however, that the Commission may not materially interfere with Railway's rights and operations under this agreement or Railway's Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB; and provided, further, that the Commission shall to the extent possible notify Railway as soon as practicable of

any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Railway shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Railway's assistance to transport materials or to perform other transportation or construction services for public projects, Railway will provide such assistance at rates reasonably to be determined between the parties.

- 3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with Railway, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service, and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold Railway, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of Railway, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations.
- 3.3. Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan, dated February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. Railway shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Railway shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by agreement between Railway and the applicable local government (which agreement shall become a

Railway Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. Assignment of certain Contracts and Agreements

- 4.1. Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign (i) to Railway, certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the “Railway Agreements”), and (ii) to the Commission, all other agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the “Commission Agreements”).
- 4.2. Subject to the provisions of Section 2.3, which prohibit material interference with Railway’s Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB, any new Railway Agreement granting third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, or contemplating alterations thereto, is subject to the Commission’s prior written consent. Such Railway Agreements will be documented by Railway using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.
- 4.3. Railway is not, without the Commission’s prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Railway’s Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB), to execute any new Railway Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this agreement.
- 4.4. Railway is not, without the Commission’s prior written consent, to terminate or modify any Railway Agreement granting third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, or contemplating alterations thereto.

5. Maintenance and Operation of Railroad Facilities

- 5.1. Initial Rehabilitation and Repair Projects. The Commission may, subject to the Commission’s contracting policies, rules, and

procedures and to the terms of this agreement, including Section 6.1, perform any rehabilitation of, or repairs to, the Railroad Facilities required to be performed under the terms of the Purchase and Sale Agreement.

5.2. Maintenance of Freight Easement Property and Railroad Facilities.

5.2.1. Freight Easement Property and Railroad Facilities.

Railway, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by Railway (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with applicable law or any Railway Agreement.

5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Railway shall be responsible for: (i) drainage and culvert maintenance and clearance on the Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by applicable law. The Commission grants Railway a license to enter all portions of the Property as necessary to perform such maintenance; Railway shall be required to repair any damage caused as the result of Railway's performance of any such maintenance. Except as required by applicable law, Railway shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. Railway shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Railway is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Property, or related to any actions, omissions, or situations off or outside of the Property.

5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. Railway may, at its option, enter portions of the Property outside the Freight Easement Property to maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety and efficiency of Railway's operations. The Commission grants Railway a license to enter all portions of the Property as necessary to perform such work; Railway shall be required to repair any damage caused as

the result of Railway's performance of any such maintenance. The Commission shall have no liability to Railway for maintenance of portions of the Property outside of the Freight Easement Property and Railway's exclusive remedies for damage to the Freight Easement Property or Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Railway's exclusive remedies are those set forth in Section 2.8.2, 8.3 and 14.2.

5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by Railway include, as required by applicable law, (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, Section 417, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage management; and (d) compliance with all mandated reporting. Railway shall not be in default under this agreement if it does not perform tie replacement programs or upgrades of rail, switches, bridges, or other track material provided that (e) Railway's failure to perform such replacement programs or upgrades does not violate applicable law or Railway's specific maintenance obligations under this agreement, and (f) Railway uses reasonable diligence to seek outside funding sources for such work. The Commission shall have no responsibility to maintain the trackage, structures, or any other Railroad Facilities.

5.2.5. Concurrently with the execution of this agreement, both parties shall execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to Railway in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this agreement.

5.2.6. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission shall be responsible for the maintenance of any improvement it constructs on any portion of the Property. As used in this subsection, the term "improvement" excludes improvements made to the Railroad Facilities, unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance cost thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3.

5.3. Ownership of Track Materials. All track materials installed by Railway as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this agreement, or after completion of rehabilitation and repair projects by the Commission, including the projects described in Section 5.1, and shall become the Commission's property. All materials removed by Railway from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was Railway's, become the property of Railway. Railway shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. Railway shall keep a written record of track materials and other improvements removed from, or installed upon, the Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

5.4. Clearing of Obstructions, Derailments, and Wrecks. Railway shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment on Railroad Facilities.

5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, Railway shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck.

5.4.2. If Railway fails to comply with the provisions of this section, the Commission may perform the required action and charge Railway the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Railway for the restoration of any damage caused by any third party to any bridge or if in the Commission's reasonable judgment, such damage does not expose the

Commission to potential liability to the FRA, PUC, or any other third party, and either (A) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) Railway abandons the subject portion of the Property under Section 8.3. In addition, the Commission shall not charge Railway for the restoration of any damage caused by the Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

- 5.4.3. Nothing in this section is intended to preclude legal action by Railway or the Commission against any third party causing such obstruction, derailment, or wreck.

5.5. Responsibility for Repair or Replacement.

- 5.5.1. Damage Caused by Freight Operations. Except as otherwise set forth in this agreement, Railway will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by, or related to, Railway's operations.

- 5.5.2. Damage Caused by Commission. Railway will not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.

- 5.5.3. Damage Caused by Acts of God or Other Factors beyond Railway's Control. If any portion of the Freight Easement Property or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Railway's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then Railway may, but shall not be required to, at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities; (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities; or (c) seek to abandon Tourist Service or Freight Service over all or such portion of the Property as Railway deems appropriate as set forth in Section 8.3.

6. Construction, Relocation, or Removal of Railroad Facilities

6.1. By the Commission.

- 6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to Railway's rights under this agreement, the Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.
- 6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, Railway's rights and operations under this agreement or Railway's Freight Service rights and obligations under federal law or rights under the Freight Easement, unless first approved by the STB. The Commission shall to the extent possible notify Railway as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. Railway shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Railway's quote and having Railway perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Railway's Right of Entry Agreement (a copy of which is attached as Exhibit D).
- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Railway shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this agreement and may not be sold to third parties or used elsewhere.

- 6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.
- 6.2. By Railway. Railway may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that Railway first obtains the Commission's written approval of Railway's plans for such modifications and improvements, subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB. Subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB, Railway's modification or improvement of the Freight Easement Property and Railroad Facilities will be coordinated with existing or future legal public uses of the Property that the Commission may authorize. Railway may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by Railway, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.
- 6.3. The Commission understands that Railway requires locations outside of the Freight Easement Property at which to store and maintain equipment and materials necessary for Railway's Freight Operations including a locomotive pit. The parties agree that Railway may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that Railway will need to identify and construct additional maintenance and storage locations on the Property, which Railway may do as needed, subject to applicable law and the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, unless first approved by the STB).

- 6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. License Fees

- 7.1. For consideration of the rights granted under this agreement, Railway shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First 500 carloads per quarter: \$0.00;

7.1.1.2. Any additional carloads per quarter: 5% of Railway's handling revenue for such carloads.

7.1.1.3. Storage: Fifty percent (50%) of Railway's storage revenue in excess of \$2.00 per car per storage day per quarter.

7.1.2. Temporary Use of Laydown Space. Railway may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space outside of the Freight Easement Property next to railroad track). The parties agree that Railway will need to identify such temporary laydown locations on the Property, which Railway may do as needed, subject to applicable law and the Commission's prior written consent. Railway shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by Railway or its shipper, the Commission will make available an alternative laydown location reasonably acceptable to Railway and shipper, and Railway shall as soon as practicable discontinue that use of such laydown space and move to the alternative laydown location. Railway shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Railway by such shippers for such use of such laydown space.

7.1.3. Tourist Service: 5% of passenger ticket revenue on ticket revenue over and above \$300,000 per quarter.

- 7.2. Railway shall, within 60 days following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Railway shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.
- 7.3. Railway shall, within 60 days following the end of each calendar quarter, pay the Commission all amounts due the Commission for the prior calendar quarter.

8. Term and Termination

- 8.1. This agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4, and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.
- 8.2. If (i) Railway does not regularly use the Freight Service or Tourist Service rights in accordance with the plan approved by the Commission (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the Commission's prior written approval, or (ii) Railway remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Railway specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice; provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this agreement provided that Railway begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, Railway shall proceed to abandon Freight Service in accordance with section 8.3; provided, that no expiration or termination of this agreement shall be effective unless and until the STB has approved such abandonment. As used in this Section 8.2, the term "regularly use" means revenue train operations for either Freight Service or Tourist Service consisting of a minimum of 40 freight cars per year, or 15,000 passengers per year (beginning with the third year following the effective date of this agreement), as applicable.
 - 8.2.1. The parties recognize that there are currently little or no revenue train operations on the Freight Easement Property

or Railroad Facilities and that it may take time for Railway to develop such operations, if they can be developed. The Commission thus agrees that it shall not terminate this agreement due to the lack of any such revenue train operations for a period of three years from the effective date of this agreement.

- 8.2.2. The Commission also agrees that it shall not terminate this agreement due to Railway's failure to use the rights herein granted with respect to any segment of the Freight Easement Property or Railroad Facilities that is necessary to support any Freight Service or Tourist Service over any regularly-used portion of the Freight Easement Property north of any unused segment.

8.3. Abandonment.

- 8.3.1. Railway may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as Railway deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Railway deems appropriate. In the event that Railway seeks to abandon Freight Service, Railway shall provide the Commission with 90 days advance notice of Railway's intention and shall, at no cost to Railway, cooperate with the Commission's efforts to take upon itself all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which Railway intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of Railway and the Commission agrees that it will cooperate with Railway in Railway's efforts to so abandon any Tourist Service or Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof. In addition, this agreement shall not terminate with respect to all or any portion of the Property unless and until the STB has issued such approval.

- 8.3.2. Any abandonment proceedings instituted by Railway shall comply with the abandonment provisions set forth in the Freight Easement, including the railbanking/OFA provisions thereof.

- 8.3.3. To the extent the STB approves abandonment of Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of Railway to the Commission, shall, at the time of consummation of such abandonment, terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Railway shall, if so requested by the Commission, (i) assign to the Commission any Railway Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.
- 8.4. All obligations incurred by the parties prior to the termination of this agreement shall be preserved until satisfied. Notwithstanding the foregoing, if Railway terminates this agreement as to any portion of the Freight Easement Property or Railroad Facilities after damage to the same by any third party, or because the cost to maintain, repair, or replace the same is not economical, Railway shall thereafter have no liability to the Commission for the cost to perform any related obligations.
- 8.5. Upon the effective date of termination of this agreement, Railway shall, if so requested by the Commission, (i) assign to the Commission all Railway Agreements, (ii) quitclaim the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.
9. **Insurance.** Railway and the Commission shall obtain the insurance set forth below, to be kept in force during the life of this agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to the Commission, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.
- 9.1. Railway Insurance: Railway shall, at its own cost and expense, provide and procure Railroad Liability and Workman's Compensation insurance.

- 9.1.1. The insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed \$250,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this agreement.) Prior to the execution of this agreement, Railway shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Railway shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
- 9.1.2. The insurance policy must include the Commission as an "additional insured."
- 9.1.3. Required Provisions: The insurance policy shall contain, or be endorsed to contain, the following provisions:
- 9.1.3.1. For any claims related to this agreement, Railway's insurance coverage shall be primary insurance as respects the Commission, its directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission, its directors, officers, employees, or agents, shall be in excess of Railway's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the Commission's insurance shall be primary and any insurance or self-insurance maintained by Railway, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.
- 9.1.3.2. Any failure by Railway to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officers, employees, or agents.

9.1.3.3. Railway's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Commission.

9.1.4. Workers' Compensation insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.

9.1.5. The fact that insurance is obtained by Railway or by the Commission on behalf of Railway will not be deemed to release or diminish Railway's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by the Commission from Railway or any third party will not be limited by the amount of the required insurance coverage.

9.2. Commission Insurance: The Commission shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workman's Compensation insurance as it deems necessary to cover its obligations under this agreement.

10. **Notices.** All correspondence, notices, and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

If to Railway: President
Santa Cruz and Monterey Bay Railway Co.
118 S. Clinton St., Suite 400
Chicago, IL 60661
Attn: Ed Ellis and Kevin Busath
Fax: 312-466-9589

If to Commission: Executive Director
Santa Cruz County Regional Transportation
Commission
1523 Pacific Avenue
Santa Cruz, CA 95060
Fax: 831-460-3215

11. Coordination Committee

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of two representatives from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Railway and the Commission.

12. Claims and Liens for Labor and Material

12.1. Railway agrees to pay in full for all materials joined or affixed to the Property, to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property, as to any work done or materials furnished thereon by Railway or at Railway's request. Railway shall indemnify, hold harmless and defend Commission (with counsel reasonably acceptable to Commission) against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

13. Property Taxes

13.1. So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes levied upon and against any Freight Easement Property or Railroad Facilities. Railway shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. Indemnity

- 14.1. Railway shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) Railway's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Railway's provision of Freight Service or Tourist Service; or (c) Railway's failure to comply with or perform any of the terms and conditions set forth in this agreement; except to the extent that the Loss is caused by the sole negligence or willful misconduct of the Commission, its officers, agents, or employees, or a breach of an express material warranty of the Commission. The provisions of this section shall survive the termination or expiration of the term of this agreement.
- 14.2. The Commission shall indemnify, defend and hold harmless Railway from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Railway; or (b) damage to or loss or destruction of Railway's equipment, rolling stock and any items being transported on behalf of Railway's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.8. The provisions of this section shall survive the termination or expiration of the term of this agreement.
- 14.3 Each party's obligations to the other under Sections 14.1 and 14.2 respectively are subject to the following conditions: (a) the party seeking indemnification (the "Indemnified Party") shall, following Indemnified Party's discovery of a Loss for which Indemnified Party seeks indemnification, or of circumstances that may reasonably result in such a Loss, promptly deliver notice to the other party (the "Indemnifying Party") describing such Loss or circumstances, (b) the Indemnified Party shall make reasonable efforts to mitigate the effect of such Loss or circumstances, (c) the Indemnified Party shall give the Indemnifying Party every opportunity to control the defense against such Loss, and shall not compromise or settle such Loss without the Indemnifying Party's prior written consent, and (d) in no event shall either party be liable to the other for consequential, incidental, indirect or punitive damages, even if notified of the possibility of such damages, unless

such damages are included in any third-party claim against the Indemnified Party.

15. **Removal of Railway Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, Railway shall, at its sole expense, remove its equipment, personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Railway to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If Railway fails to do the foregoing, the Commission may do such work at the cost and expense of Railway. Railway may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16. **Hazardous Substances and Wastes**

- 16.1. Railway shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to the commencement date of its operations on the Freight Easement Property, except to the extent Railway's activities exacerbate the contamination of any such pre-existing Hazardous Materials.
- 16.2. Railway shall comply with all applicable laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Railway shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Railway shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Railway assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Railway and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Railway. Railway shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between the commencement date of its operations on the Freight Easement Property, and the expiration or sooner

termination of this agreement, and related to Railway's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.3. Railway shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Railway shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Railway shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between the commencement date of its operations on the Freight Easement Property, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.
- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Railway shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Railway knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Railway shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.
- 16.6. This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by Railway.

17. **Trespassers and Dangerous Conditions.** Railway shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by Railway personnel. If Railway becomes aware of any dangerous conditions on or about the Property, Railway shall promptly notify the Commission of such conditions.
18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.
19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of the other party's intention to take any action as to which consent is required or permitted.
20. **Non-binding Mediation**
- 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least one-year of exposure to the concepts of railroad operations and maintenance.
- 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question.

- 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.
21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein.
22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.
23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Railway shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.
24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
25. **Venue and Choice of Law**
- 25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in San Francisco County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.
- 25.2. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.
26. **Acts of God and Other Disruptions of Service.** Neither party shall be deemed to be in default of this agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes

beyond the party's control; provided, however, that performance shall only be excused for as long as the disruption persists.

27. Miscellaneous

- 27.1. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 5.2 that Railway comply with applicable bridge safety management program regulations (under Public Law 110-432, Section 417) is held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Railway for the cost thereof, or (ii) terminate this agreement.
- 27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.
- 27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.
- 27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each party shall deposit the executed agreement into escrow with instructions to deliver the agreement upon close of escrow under the Purchase and Sale Agreement.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY **SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION**

By: _____
Edwin E. Ellis
President

By: _____
George A. Dondero
Executive Director

Exhibit A
Map of Railroad Facilities

Exhibit B
Permitted Rail Car Storage Locations

Exhibit C
Railway Agreements

Exhibit D

Form of Railway Right of Entry Agreement

ATTACHMENT 2

ADMINISTRATION, COORDINATION AND LICENSE AGREEMENT (comparison to prior version)

Draft Dated 07.22.12
Marked to Show Changes from
Agreement Negotiated with Sierra Northern

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated , ~~2011~~2012, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Santa Cruz and Monterey Bay Railway Company~~Sierra Northern Railway~~, a California corporation ("SierraRailway").

The Commission purchased the Santa Cruz Branch railroad line (the "Property") from Union Pacific Railroad Company ("UP"), via an August 20, 2010, Purchase and Sale Agreement (the "Purchase and Sale Agreement"); and

UP reserved an easement to conduct common carrier freight railroad operations on and over the Property (the "Freight Easement"), which Freight Easement is set forth in the Quitclaim Deed by which UP, as grantor, quitclaimed all of its right, title and interest in and to the Property to the Commission, as grantee; and

UP has quitclaimed all of its right, title, and interest in and to the Freight Easement to SierraRailway and SierraRailway is the sole freight rail operator on the Freight Easement;

SierraRailway needs a long-term agreement of at least 10 years, covering all facets of railroad operations, in order to justify its investment of time and money needed to conduct such railroad operations; and

SierraRailway and the Commission desire to establish their respective rights and obligations with respect to the Property and the Freight Easement by entering into this agreement.

The parties therefore agree as follows:

1. Definitions

- 1.1 The term "Commission" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.
- 1.2 The term "Coordination Committee" is defined as the committee established by the parties pursuant to Section 11.
- 1.3 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.

- 1.4 The term “Freight Easement” is defined in the introductory paragraphs of this agreement.
- 1.5 The term “Freight Easement Property” is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.
- 1.6 The term “Freight Service” is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.5), transloading freight and dispatching.
- 1.7 The term “Hazardous Materials” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term “Hazardous Materials Laws” means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.10 The term “Loss” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys’ fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or ~~Sierra~~Railway; or (b) damage to or loss or destruction of any property, including the Property, any adjacent

property, and the roadbed, tracks, equipment, other property of the Commission or SierraRailway, and any property in the Commission's or SierraRailway's care or custody.

1.11 The term "Property" is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.

1.12 The term "PUC" is defined as the California Public Utilities Commission.

~~1.13~~ 1.13 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.

~~1.14~~ 1.14 The term "SierraRailway" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.

~~1.15~~ 1.15 The term "STB" is defined as the United States Surface Transportation Board or its regulatory successor.

~~1.16~~ 1.16 The term "Tourist Service" is defined as the transportation of tourists by rail. Tourist Service does not include regularly-scheduled passenger transit or commuter service.

~~1.17~~ 1.17 The term "UP" is defined in the introductory paragraphs of this agreement.

2. **Commission Grants Rights**

2.1. Freight Service. The Commission grants SierraRailway the exclusive right and obligation to provide Freight Service on the Freight Easement Property. SierraRailway's rights and obligations to provide Freight Service under this agreement are limited to those set forth in the Freight Easement or in this agreement. SierraRailway may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.

- 2.2. Trackage License. The Commission grants SierraRailway an exclusive license to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.
- 2.3. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this agreement, the exercise of such rights by the Commission may not materially interfere with SierraRailway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB.
- 2.4. Tourist Service and Other Third-Party Licenses.
- 2.4.1. SierraRailway Tourist Service. The Commission grants SierraRailway a non-exclusive license to use the Freight Easement Property and Railroad Facilities to provide Tourist Service between Milepost 18.74 in Santa Cruz and the northern end of the Freight Easement Property~~Milepost 31.39 in Davenport~~; provided that prior to the commencement of operations (a) the Commission has approved in writing a detailed plan from SierraRailway describing such Tourist Service, (b) the Tourist Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) SierraRailway has obtained any governmental authorizations required under applicable law for such Tourist Service. SierraRailway's Tourist Service plan shall include, at a minimum, the proposed seasons, dates and times of operation (including a proposed train schedule), a financial plan and a marketing plan. The parties acknowledge that Railway desires to operate Tourist Service over other segments of the Freight Easement Property as well. Commission approval of a plan for Tourist Service over such other segments, if any, will be subject to the Commission's prior receipt of public comments.~~The parties understand and agree that Sierra may assign this Tourist Service license to Mendocino Railway by written assignment approved in writing by the Commission. The assignment shall require Mendocino Railway to be bound by the terms and conditions of this agreement relating to this Tourist Service license and to attorn to the Commission as the licensor. No such assignment shall relieve Sierra of its obligations under this~~

~~agreement, including obligations related to this Tourist Service license.~~

2.4.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities (excluding licenses for temporary rail car storage or repairs on the Railroad Facilities), provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, SierraRailway's right to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes, (b) do not materially conflict with, and are subject and subordinate to, any other license granted Railway hereunder having with a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of SierraRailway's costs (including labor costs, materials costs, equipment costs — using equivalent rental costs as a proxy for capital and maintenance and repair costs — travel, fuel, contract labor, and appropriate overhead) to maintain and repair the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of SierraRailway in Section 9 and (ii) indemnify and hold harmless SierraRailway and the Commission as to any Loss arising out of or related to licensee's operations.

2.4.2.1. For a period of three years after the effective date of this agreement, any third-party license for Tourist Service between Milepost 20.9 and the northern end of the Freight Easement Property Milepost 31.39 will be deemed to materially conflict with SierraRailway's Tourist Service license, except in the case of special Tourist Service events as described in Section 2.4.2.9. The provisions of this Section 2.4.2.1 are conditioned on the following (all dates are measured following the effective date of this agreement):

- a. Within 6 months: SierraRailway shall submit its plan for its initial Tourist Service to the Commission pursuant to Section 2.4.1.
- b. Within 3 months after Commission approval of initial plan: SierraRailway shall ensure that the Railroad Facilities for its initial Tourist Service meet and are maintained to Class 1 track

standards and obtain appropriate FRA and PUC inspections to verify the same.

- c. Within 5 months after Commission approval of initial plan: SierraRailway shall secure all permits and agreements required to operate its initial Tourist Service.
- d. Within 6 months after Commission approval of initial plan: SierraRailway shall initiate its initial Tourist Service.
- e. Levels of Service: SierraRailway's Tourist Service shall carry the following numbers of revenue passengers:
 - I. First Year of Service: 5,000 passengers.
 - II. Second Year of Service: 10,000 passengers.
 - III. Third Year of Service: 15,000 passengers.

2.4.2.2. Following the date that is three years after the effective date of this agreement, a third-party license for Tourist Service will be deemed to materially conflict with another license granted Railway hereunder under with a plan previously approved in writing by the Commission if the third party (a) operates on a substantially similar portion of the Freight Easement Property and Railroad Facilities covered by the previously-approved license/plan, (b) permits an activity that is substantially similar to the previously-approved license/plan and (c) operates during substantially similar seasons, and on substantially similar days and times of day, as the previously-approved license/plan.

2.4.2.3. If SierraRailway or any third-party licensee ("Tourist Operator") fails to initiate and continue to operate Tourist Service substantially in accordance with the plan approved by the Commission, then the applicable Tourist Operator's operations may, at the Commission's option, lose priority over any other operations, but only to the extent of such failure to operate.

2.4.2.4. If SierraRailway constructs capital improvements to the portion of the Freight Easement Property and Railroad Facilities used by a third party ~~the licensee~~, the Commission shall promptly and reasonably determine (i) the benefit of such improvements to ~~the~~ such licensee, (ii) the cost apportionment of such improvements between SierraRailway and ~~the~~ such licensee, and (iii) the appropriate amortization period for such improvements (for capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The Commission's contract with such licensee will (i) require the licensee to pay amounts due, within 30 days following receipt of written notice from Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement, pay amounts due. As used in this agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.4.2.5. ~~The~~ Each third-party licensee's proportionate share of SierraRailway's costs shall be calculated in advance by SierraRailway (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties' relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by ~~any~~ such licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection 2.4.2.4.) ~~The~~ Such licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. SierraRailway shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. The Commission's contract with such licensee will (i) provide that if the actual costs exceed the amount charged to the such licensee, the such licensee will, within 30 days following receipt of written notice of such reconciliation from Railway pay the additional amount to SierraRailway and (ii) name Railway as a third-party beneficiary

with rights of enforcement. If the actual costs are less than the amount charged to the such licensee, SierraRailway will within 30 days following such reconciliation refund the balance to the such licensee.

2.4.2.6. If the Commission, in its discretion, elects to require a lower level of insurance coverage for the licensee than the level of coverage then required of SierraRailway under Section 9, the Commission shall correspondingly lower the limits of coverage required of SierraRailway under Section 9, provided that if SierraRailway elects to reduce the levels of its insurance, it shall also reduce the self-insured retention to the level required of the third-party licensee.

2.4.2.7. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to SierraRailway's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. SierraRailway agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. SierraRailway further agrees to maintain such Records for a period of three years. The Commission acknowledges and agrees that these Records constitute SierraRailway's confidential information and shall not be disclosed to any third-party without SierraRailway's prior written approval, except as otherwise required by applicable law.

2.4.2.8. SierraRailway will reasonably cooperate with any third party holding rights to use the Property, including, without limitation, any third-party Tourist Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities, provided

such cooperation does not require significant unreimbursed expense for Railway.

2.4.2.9. In addition to all other rights of Commission under this agreement, and notwithstanding anything to the contrary in this agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.4.2.(a) and (b), provided that such special events will only be deemed to materially conflict with another Tourist Service license granted Railway hereunder ~~under with~~ a plan previously approved in writing by the Commission if they operate during the same season, and on the same days and times of day, as the previously-approved license/plan. The Commission will consult with SierraRailway regarding SierraRailway's willingness and ability to operate such special events.

If the Commission and Railway jointly decide that Railway should ~~elects to have Sierra operate the special event, SierraRailway will operate the special event for a commercially reasonable an all-inclusive fee (for locomotive, crew, fuel, trainset, and trackage rights) based on Railway's documented costs (including, without limitation, locomotive, fuel, trainset, labor and overhead costs) plus ten percent (10%)(the "Special Event Fee") in the amount of \$4,500 per day.~~ If the Commission elects to have another operator operate the special event, the Commission will pay, or cause to be Special Event Fee paid to SierraRailway a fee of will be \$2,500 per day (the "Special Event Fee"), which fee shall cover all services to be provided by SierraRailway to support an event operated by a third party including, but not limited to, dispatching, inspections, and maintenance (but excluding SierraRailway's provision of any locomotive, trainset, crew, and fuel). The Special Event Fee shall be adjusted annually as of July 1st of each year to an amount calculated by multiplying the Special Event Fee specified above by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA

(1982-84=100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment, and the denominator of which shall be the CPI for June 2010. Nothing in this paragraph shall preclude the Commission and SierraRailway from negotiating other arrangements for special events (e.g., special events for which there is a different operational or fee structure, including events for which SierraRailway is both the operator and receives all or a portion of the fare revenue).

2.5. Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, SierraRailway may enter into agreements with any party for temporary rail car storage or repairs on the Railroad Facilities consistent with the provisions of Sections 2.5.1 and 2.5.2; provided that Railway shall deliver a copy of each such agreement to the Commission promptly following execution thereof. The Commission acknowledges that such agreements are Railway's proprietary information ("Confidential Information") and the Commission shall not disclose any matters contained therein to any person or entity, except as required by law, or to RTC's directors, officers, employees, consultants or advisors. If Commission is requested in any judicial or administrative proceeding, or pursuant to the California Public Records Act (California Government Code 6250 et seq.), to disclose any Confidential Information, the Commission shall promptly notify Railway of such request so that Railway may resist such disclosure or seek an appropriate protective order or other remedy. If, in the absence of such a protective order or other remedy, the Commission is nonetheless compelled to disclose Confidential Information, Commission may disclose such Confidential Information without liability hereunder. However, Sierra shall not enter into any agreements pursuant to this section without obtaining the Commission's prior written consent.

2.5.1. Unless otherwise expressly agreed by the Commission in writing, SierraRailway will not (i) store more than 100 rail cars, (ii) store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, SierraRailway may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.

2.5.2. Following the earlier of (i) SierraRailway's institution of Tourist Service pursuant to Subsection 2.4.1, or (ii) three years after the effective date of this agreement, SierraRailway shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that materially affects the ability of any third-party Tourist Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights. ~~A reciprocal provision will be placed in any third-party license for Tourist Service granted by the Commission.~~

2.5.3. The provisions of Subsections 2.5.1 and 2.5.2 apply to future storage agreements as well as storage agreements existing as of the effective date of this agreement.

2.6. Investigation.

2.6.1. SierraRailway hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for SierraRailway's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written representations or warranties with respect to the Freight Easement Property or Railroad Facilities.

2.6.2. The Commission acknowledges that SierraRailway cannot make any investigation, or satisfy itself, with respect to how the Property or the public's use of the Property may change following the Commission's purchase of the Property from UP. In the event that any public use of the Property, or illegal activities by third parties, including trespassing, cause any significant economic or operational problems for SierraRailway, SierraRailway may terminate this agreement, provided SierraRailway complies with the provisions of Section 8.3.

2.7. As-Is, Where-Is. SierraRailway shall take the Freight Easement Property in an "as-is, where-is" condition and without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Freight Easement Property, and subject to:

(i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.

2.8. Release. SierraRailway, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Freight Easement Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Freight Easement Property, or any clearance constraints on the Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.

2.8.1. SierraRailway hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either SierraRailway or Commission with respect to the operations of SierraRailway, a waiver of any right to subrogation which any such insurer of SierraRailway may acquire against Commission by virtue of the payment of any loss under such insurance.

2.8.2. If any Loss described in Section 2.8 is caused by a third party under contract with the Commission, the Commission ~~may~~shall, at its option, (i) pursue any claim it may have against the third party contractor, or (ii) assign to SierraRailway any such claim, provided that SierraRailway shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

2.8.2.1. First, Freight Easement Property and Railroad Facilities;

2.8.2.2. Then, railroad equipment.

If SierraRailway commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to SierraRailway and neither party will have any further responsibility under this Subsection 2.8.2 as to such claim.

If SierraRailway's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to SierraRailway, as provided above.

2.8.3. The provisions of this Section 2.8 shall survive the termination or expiration of this agreement.

2.9. The rights granted by the Commission under Sections 2.1 - 2.5 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. **Limitation and Subordination of Rights Granted**

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose that is not inconsistent with this agreement. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to SierraRailway for compensation or damages; provided, however, that the Commission may not materially interfere with SierraRailway's rights and operations under this agreement or SierraRailway's Freight Service rights and obligations under federal law or under the Freight Easement, (unless first approved by the STB); and provided, further, that the Commission shall to the extent possible notify SierraRailway as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. SierraRailway shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests SierraRailway's assistance to transport materials or to perform other transportation or construction services for public projects, SierraRailway will provide such assistance at rates reasonably to be determined between the parties.

3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with SierraRailway, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service,

and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold SierraRailway, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of SierraRailway, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations.

- 3.3. Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan, dated February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. SierraRailway shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that SierraRailway shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by agreement between SierraRailway and the applicable local government (which agreement shall become a SierraRailway Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. Assignment of certain Contracts and Agreements

- 4.1. Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign (i) to Pursuant to the Assignment and Assumption Agreement dated as of December 18, 2009, Union Pacific assigned to SierraRailway, certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the "SierraRailway Agreements"), and (ii) . Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign to the Commission, all other

agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the "Commission Agreements").

- 4.2. Subject to the provisions of Section 2.3, which prohibit material interference with SierraRailway's Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB, any new SierraRailway Agreement granting third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, or contemplating alterations thereto, is subject to the Commission's prior written consent. Such Railway Agreements will ~~and is to be~~ documented by SierraRailway using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.
- 4.3. ~~In addition to the general consent requirement of Section 4.2,~~ SierraRailway is not, without the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with SierraRailway's Freight Service rights and obligations under federal law or under the Freight Easement, unless first approved by the STB), to execute any new SierraRailway Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this agreement.
- 4.4. SierraRailway is not, without the Commission's prior written consent, to terminate or modify any SierraRailway Agreement granting third-party rights of access to, or use of, the Freight Easement or Railroad Facilities, or contemplating alterations thereto.

5. Maintenance and Operation of Railroad Facilities

- 5.1. Initial Rehabilitation and Repair Projects. The Commission may, subject to the Commission's contracting policies, rules, and procedures and to the terms of this agreement, including Section 6.1, perform any rehabilitation of, or repairs to, the Railroad Facilities required to be performed under the terms of the Purchase and Sale Agreement.
- 5.2. Maintenance of Freight Easement Property and Railroad Facilities.

- 5.2.1. Freight Easement Property and Railroad Facilities. SierraRailway, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by SierraRailway (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with applicable law or any SierraRailway Agreement.
- 5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that SierraRailway shall be responsible for: (i) drainage and culvert maintenance and clearance on the Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by applicable law. The Commission grants SierraRailway a license to enter all portions of the Property as necessary to perform such maintenance; SierraRailway shall be required to repair any damage caused as the result of SierraRailway's performance of any such maintenance. Except as required by applicable law, SierraRailway shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. SierraRailway shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that SierraRailway is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Property, or related to any actions, omissions, or situations off or outside of the Property.
- 5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. SierraRailway may, at its option, enter portions of the Property outside the Freight Easement Property to maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety and efficiency of SierraRailway's operations. The Commission grants SierraRailway a license to enter all portions of the Property as necessary to perform such work; SierraRailway shall be required to repair any damage caused as the result of SierraRailway's performance of any such maintenance. The Commission shall have no liability to SierraRailway for maintenance of portions of the Property outside of the Freight Easement Property and SierraRailway's exclusive remedies for damage to the Freight Easement Property or Railroad

Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case SierraRailway's exclusive remedies are those set forth in Section 2.8.2, 8.3 and 14.2.

5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by SierraRailway include, as required by applicable law, (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, Section 417, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage management; and (d) compliance with all mandated reporting. SierraRailway shall not be in default under this agreement if it does not perform tie replacement programs or upgrades of rail, switches, bridges, or other track material provided that (e) SierraRailway's failure to perform such replacement programs or upgrades does not violate applicable law or SierraRailway's specific maintenance obligations under this agreement, and (f) SierraRailway uses reasonable diligence to seek outside funding sources for such work. The Commission shall have no responsibility to maintain the trackage, structures, or any other Railroad Facilities.

5.2.5. Concurrently with the execution of this agreement ~~and deposit into escrow~~, both parties shall execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to SierraRailway in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this agreement.

5.2.6. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission

shall be responsible for the maintenance of any improvement it constructs on any portion of the Property. As used in this subsection, the term “improvement” excludes improvements made to the Railroad Facilities, unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance cost thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3.

5.3. Ownership of Track Materials. All track materials installed by SierraRailway as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this agreement, or after completion of rehabilitation and repair projects by the Commission, including the projects described in Section 5.1, and shall become the Commission’s property. All materials removed by SierraRailway from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was SierraRailway’s, become the property of SierraRailway. SierraRailway shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. SierraRailway shall keep a written record of track materials and other improvements removed from, or installed upon, the Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

5.4. Clearing of Obstructions, Derailments, and Wrecks. SierraRailway shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment ~~or on~~ Railroad Facilities.

5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, SierraRailway shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck.

5.4.2. If SierraRailway fails to comply with the provisions of this section, the Commission may perform the required action and charge SierraRailway the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge SierraRailway for the restoration of any damage caused by any third party to any bridge or if in the Commission’s reasonable judgment, such damage does not expose the Commission to potential liability to the FRA, PUC, or any other third party, and either (A) such damage

does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) SierraRailway abandons the subject portion of the Property under Section 8.3. In addition, the Commission shall not charge SierraRailway for the restoration of any damage caused by the Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

5.4.3. Nothing in this section is intended to preclude legal action by SierraRailway or the Commission against any third party causing such obstruction, derailment, or wreck.

5.5. Responsibility for Repair or Replacement.

5.5.1. Damage Caused by Freight Operations. Except as otherwise set forth in this agreement, SierraRailway will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by, or related to, SierraRailway's operations.

5.5.2. Damage Caused by Commission. SierraRailway will not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.

5.5.3. Damage Caused by Acts of God or Other Factors beyond SierraRailway's Control. If any portion of the Freight Easement Property or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond SierraRailway's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then SierraRailway may, but shall not be required to, at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities; (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities; or (c) seek to abandon Tourist Service or Freight Service over all or such portion of the Property as SierraRailway deems appropriate as set forth in Section 8.3.

6. **Construction, Relocation, or Removal of Railroad Facilities**

6.1. By the Commission.

- 6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to SierraRailway's rights under this agreement, the Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.
- 6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, SierraRailway's rights and operations under this agreement or SierraRailway's Freight Service rights and obligations under federal law or rights under the Freight Easement, (unless first approved by the STB). The Commission shall to the extent possible notify SierraRailway as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. SierraRailway shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting SierraRailway's quote and having SierraRailway perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute SierraRailway's Right of Entry Agreement (a copy of which is attached as Exhibit D).
- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then SierraRailway shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this agreement and may not be sold to third parties or used elsewhere.
- 6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used

for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

- 6.2. By SierraRailway. SierraRailway may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that SierraRailway first obtains the Commission's written approval of SierraRailway's plans for such modifications and improvements, subject to the provisions of Section 2.3, which prohibit material interference with SierraRailway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB. Subject to the provisions of Section 2.3, which prohibit material interference with SierraRailway's Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB, SierraRailway's modification or improvement of the Freight Easement Property and Railroad Facilities will be coordinated with existing or future legal public uses of the Property that the Commission may authorize. SierraRailway may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by SierraRailway, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.
- 6.3. The Commission understands that SierraRailway requires locations outside of the Freight Easement Property at which to store and maintain equipment and materials necessary for SierraRailway's Freight Operations including a locomotive pit. The parties agree that SierraRailway may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that SierraRailway will need to identify and construct additional maintenance and storage locations on the Property, which SierraRailway may do as needed, subject to applicable law and the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with SierraRailway's Freight Service rights and obligations under federal law, unless first approved by the STB).

- 6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. License Fees

- 7.1. For consideration of the rights granted under this agreement, SierraRailway shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First 500 carloads per quarter: \$0.00;

7.1.1.2. Any additional carloads per quarter: 5% of SierraRailway's handling revenue for such carloads.

7.1.1.3. Storage: Fifty percent (50%) of Railway's storage revenue in excess of \$2.00 per car per storage day per quarter ~~\$1.00 per day per car in storage.~~

- 7.1.2. Temporary Use of Laydown Space. SierraRailway may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space outside of the Freight Easement Property next to railroad track). The parties agree that SierraRailway will need to identify such temporary laydown locations on the Property, which SierraRailway may do as needed, subject to applicable law and the Commission's prior written consent. SierraRailway shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by SierraRailway or its shipper, the Commission will make available an alternative laydown location reasonably acceptable to SierraRailway and shipper, and SierraRailway shall as soon as practicable discontinue that use of such laydown space and move to the alternative laydown location. SierraRailway shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by SierraRailway by such shippers for such use of such laydown space.

7.1.3. Tourist Service: 5% of passenger ticket revenue on ticket revenue over and above \$300,000 per quarter~~\$1.00 per passenger.~~

7.2. SierraRailway shall, within 60 days on or before the last day of the month~~following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. SierraRailway shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.~~

7.3. SierraRailway shall, within 60 days following the end of each calendar quarter on or before January 31 of each calendar year, pay the Commission all amounts due the Commission for the prior four~~calendar quarters.~~

8. Term and Termination

8.1. This agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4, and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.

8.2. If (i) SierraRailway does not regularly use the Freight Service or Tourist Service rights in accordance with the plan approved by the Commission (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the Commission's prior written approval, or (ii) SierraRailway remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to SierraRailway specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice; provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this agreement provided that SierraRailway begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, SierraRailway shall proceed to abandon Freight Service in accordance with section 8.3; provided, that no expiration or termination of this agreement shall be effective unless and until the STB has approved such abandonment. As used in this Section 8.2, the term "regularly use" means revenue train operations for either Freight Service or Tourist Service consisting of a minimum of 40

freight cars per year, or 15,000 passengers per year (beginning with the third year following the effective date of this agreement), as applicable.

8.2.1. The parties recognize that there are currently little or no revenue train operations on the Freight Easement Property or Railroad Facilities and that it may take time for SierraRailway to develop such operations, if they can be developed. The Commission thus agrees that it shall not terminate this agreement due to the lack of any such revenue train operations for a period of three years from the effective date of this agreement.

8.2.2. The Commission also agrees that it shall not terminate this agreement due to SierraRailway's failure to use the rights herein granted with respect to any segment of the Freight Easement Property or Railroad Facilities that is necessary to support any Freight Service or Tourist Service over any regularly-used portion of the Freight Easement Property north of any unused segment.

8.3. Abandonment.

8.3.1. SierraRailway may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as SierraRailway deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as SierraRailway deems appropriate. In the event that SierraRailway seeks to abandon Freight Service, SierraRailway shall provide the Commission with 90 days advance notice of SierraRailway's intention and shall, at no cost to SierraRailway, cooperate with the Commission's efforts to take upon itself all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which SierraRailway intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of SierraRailway and the Commission agrees that it will cooperate with SierraRailway in SierraRailway's efforts to so abandon any Tourist Service or Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof. In addition, this agreement shall not

terminate with respect to all or any portion of the Property unless and until the STB has issued such approval.

8.3.2. Any abandonment proceedings instituted by SierraRailway shall comply with the abandonment provisions set forth in the Freight Easement, including the railbanking/OFA provisions thereof.

8.3.3. To the extent the STB approves abandonment of Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of SierraRailway to the Commission, shall, at the time of consummation of such abandonment, terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, SierraRailway shall, if so requested by the Commission, (i) assign to the Commission any SierraRailway Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

8.4. All obligations incurred by the parties prior to the termination of this agreement shall be preserved until satisfied. Notwithstanding the foregoing, if SierraRailway terminates this agreement as to any portion of the Freight Easement Property or Railroad Facilities after damage to the same by any third party, or because the cost to maintain, repair, or replace the same is not economical, SierraRailway shall thereafter have no liability to the Commission for the cost to perform any related obligations.

8.5. Upon the effective date of termination of this agreement, SierraRailway shall, if so requested by the Commission, (i) assign to the Commission all SierraRailway Agreements, (ii) quitclaim the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

9. **Insurance.** SierraRailway and the Commission shall obtain the insurance set forth below, to be kept in force during the life of this agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to the Commission, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under

this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.

9.1. SierraRailway Insurance: SierraRailway shall, at its own cost and expense, provide and procure Railroad Commercial General Liability ("CGL") and, as applicable, Workman's Compensation or Federal Employer's Liability Act ("FELA"); insurance.

9.1.1. The ~~CGL~~ insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed ~~\$100~~\$250,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this agreement).) ~~The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this agreement, SierraRailway shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, SierraRailway shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.~~

9.1.2. The ~~CGL~~ insurance policy must include the Commission as an "additional insured," ~~(using ISO Additional Insured Endorsement CG 20 26 or a substitute form reasonably acceptable to the Commission providing reasonably equivalent coverage).~~

9.1.3. Required Provisions: The ~~CGL~~ insurance policy shall contain, or be endorsed to contain, the following provisions:

9.1.3.1. For any claims related to this agreement, SierraRailway's insurance coverage shall be primary insurance as respects the Commission, its

directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission, its directors, officers, employees, or agents, shall be in excess of SierraRailway's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the Commission's insurance shall be primary and any insurance or self-insurance maintained by SierraRailway, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.

9.1.3.2. Any failure by SierraRailway to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officers, employees, or agents.

9.1.3.3. SierraRailway's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Commission.

9.1.4. Workers' Compensation or ~~FELA~~ insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.

9.1.5. The fact that insurance is obtained by SierraRailway or by the Commission on behalf of SierraRailway will not be deemed to release or diminish SierraRailway's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by the Commission from SierraRailway or any third party will not be limited by the amount of the required insurance coverage.

9.2. Commission Insurance: The Commission shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workman's Compensation insurance as it deems necessary to cover its obligations under this agreement.

10. **Notices.** All correspondence, notices, and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

If to <u>SierraRailway</u> :	President <u>Santa Cruz and Monterey Bay Railway Co.</u>
Sierra Northern Railway	341 Industrial Way Woodland, CA 95616 Fax: 530-666-2919 118 S. Clinton St., Suite 400 Chicago, IL 60661 Attn: Ed Ellis and Kevin Busath Fax: 312-466-9589

If to Commission:	Executive Director Santa Cruz County Regional Transportation Commission 1523 Pacific Avenue Santa Cruz, CA 95060 Fax: 831-460-3215
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11. **Coordination Committee**

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of two representatives from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to SierraRailway and the Commission.

12. **Claims and Liens for Labor and Material**

12.1. SierraRailway agrees to pay in full for all materials joined or affixed to the Property, to pay in full all persons who perform labor

upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property, as to any work done or materials furnished thereon by SierraRailway or at SierraRailway's request. SierraRailway shall indemnify, hold harmless and defend Commission (with counsel reasonably acceptable to Commission) against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

13. Property Taxes

- 13.1. So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes levied upon and against any Freight Easement Property or Railroad Facilities. SierraRailway shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. Indemnity

- 14.1. SierraRailway shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) SierraRailway's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) SierraRailway's provision of Freight Service or Tourist Service; or (c) SierraRailway's failure to comply with or perform any of the terms and conditions set forth in this agreement; except to the extent that the Loss is caused by the sole negligence or willful misconduct of the Commission, its officers, agents, or employees, or a breach of an express material warranty of the Commission. The provisions of this section shall survive the termination or expiration of the term of this agreement.
- 14.2. The Commission shall indemnify, defend and hold harmless SierraRailway from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage,

claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or SierraRailway; or (b) damage to or loss or destruction of SierraRailway's equipment, rolling stock and any items being transported on behalf of SierraRailway's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.8. The provisions of this section shall survive the termination or expiration of the term of this agreement.

14.3 Each party's obligations to the other under Sections 14.1 and 14.2 respectively are subject to the following conditions: (a) the party seeking indemnification (the "Indemnified Party") shall, following Indemnified Party's discovery of a Loss for which Indemnified Party seeks indemnification, or of circumstances that may reasonably result in such a Loss, promptly deliver notice to the other party (the "Indemnifying Party") describing such Loss or circumstances, (b) the Indemnified Party shall make reasonable efforts to mitigate the effect of such Loss or circumstances, (c) the Indemnified Party shall give the Indemnifying Party every opportunity to control the defense against such Loss, and shall not compromise or settle such Loss without the Indemnifying Party's prior written consent, and (d) in no event shall either party be liable to the other for consequential, incidental, indirect or punitive damages, even if notified of the possibility of such damages, unless such damages are included in any third-party claim against the Indemnified Party.

15. **Removal of SierraRailway Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, SierraRailway shall, at its sole expense, remove its equipment, personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by SierraRailway to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If SierraRailway fails to do the foregoing, the Commission may do such work at the cost and expense of SierraRailway. SierraRailway may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16. **Hazardous Substances and Wastes**

- 16.1. SierraRailway shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to ~~December 31, 2009~~, which is the commencement date of its operations on the Freight Easement Property~~under its lease agreement with Union Pacific Railroad~~, except to the extent SierraRailway's activities exacerbate the contamination of any such pre-existing Hazardous Materials.
- 16.2. SierraRailway shall comply with all applicable laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), SierraRailway shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. SierraRailway shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. SierraRailway assumes all responsibility for the investigation and cleanup of any such release or exacerbation by SierraRailway and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by SierraRailway. SierraRailway shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between the commencement date of its operations on the Freight Easement Property~~December 31, 2009~~, and the expiration or sooner termination of this agreement, and related to SierraRailway's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.
- 16.3. SierraRailway shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, SierraRailway shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. SierraRailway shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between the commencement date of its operations on the Freight Easement Property~~December~~

31, 2009, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that SierraRailway shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.

16.5. If SierraRailway knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, SierraRailway shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.

16.6. This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by SierraRailway.

17. **Trespassers and Dangerous Conditions.** SierraRailway shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by SierraRailway personnel. If SierraRailway becomes aware of any dangerous conditions on or about the Property, SierraRailway shall promptly notify the Commission of such conditions.

18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or

option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.

19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of the other party's intention to take any action as to which consent is required or permitted.
20. **Non-binding Mediation**
 - 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least one-year of exposure to the concepts of railroad operations and maintenance.
 - 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question.
 - 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.
21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein.
22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject

matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.

23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Sierra Railway shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.

24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

25. **Venue and Choice of Law**

25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in San Francisco County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.

25.2. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.

26. **Acts of God and Other Disruptions of Service.** Neither party shall be deemed to be in default of this agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control; provided, however, that performance shall only be excused for as long as the disruption persists.

27. **Miscellaneous**

27.1. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 5.2 that Sierra Railway comply with applicable bridge safety

management program regulations (under Public Law 110-432, Section 417) is held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Sierra Railway for the cost thereof, or (ii) terminate this agreement.

- 27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.
- 27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.
- 27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each party shall deposit the executed agreement into escrow with instructions to deliver the agreement upon close of escrow under the Purchase and Sale Agreement.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION
NORTHERN RAILWAY SIERRA

By: _____

Edwin E. Ellis ~~David Magaw~~
President

By: _____

George A. Dondero
Executive Director

~~By its signature below, Sierra Railroad Company, a California corporation, acknowledges that it is the parent company of Sierra Northern Railway and agrees~~

~~to be bound by the terms and conditions of this agreement as if it were a party,
except for such terms and conditions that relate to Sierra Northern Railway's
obligations to provide common carrier freight rail service.~~

~~SIERRA RAILROAD COMPANY~~

By: _____
~~Mike Hart, President~~

Exhibit A

Map of Railroad Facilities

Exhibit B
Permitted Rail Car Storage Locations

Exhibit C

SierraRailway Agreements

Exhibit D

Form of ~~Sierra~~Railway Right of Entry Agreement

ATTACHMENT 3
QUITCLAIM DEED

EXHIBIT D**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

_____, California _____

Attn: _____

MAIL TAX STATEMENTS TO:

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

_____, California _____

Attn: _____

THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVERNMENT CODE §6103) AND FROM DOCUMENTARY TRANSFER TAX (REVENUE AND TAXATION CODE §11922).

(Space above line for Recorder's use only)

QUITCLAIM DEED

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Grantor**"), REMISES, RELEASES and QUITCLAIMS to SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("**Grantee**"), all of Grantor's rights, title, and interest in and to that certain real property (the "**Property**") in the County of [Santa Cruz/Monterey, as applicable], State of California, described on Schedule 1 attached hereto and incorporated by reference.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever (except as otherwise provided in the easement reserved for freight railroad purposes), the following:

(a) Subject to the terms and conditions below, Grantor excepts from the Property hereby quitclaimed and reserves unto itself, its successors and assigns, forever, an exclusive easement upon, over, under and across the Property, extending ten (10) feet on either side of the center line of the existing tracks and including rights of access along the length thereof, for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and

regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "**Freight Easement**");

(i) Abandonment of all or part of the Property. Grantor may at any time, for any reason, and in its sole discretion, seek STB authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Property. Grantee agrees to cooperate with, and not to directly or indirectly oppose, Grantor's abandonment efforts. If Grantee timely files with the STB a Statement of Willingness to Assume Financial Responsibility meeting the requirements of the STB's regulations, Grantor shall file with the STB: (A) an expression of willingness to enter into a rail banking/trail use agreement; (B) a statement that Grantee and Grantor have entered into such an agreement; and (C) a request that the STB issue a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU), as appropriate. Upon the effective date of each such NITU or CITU, or upon Grantor's abandonment of freight service over all of, or any segment of, the Property, (X) Grantor shall execute and deliver to Grantee an option to acquire Grantor's right to restart freight rail service on the subject segment of the Property in the form attached hereto as **Schedule 2**; and (Y) Grantor's freight easement shall automatically terminate with respect to such segment without any further liability thereunder to Grantee on the part of Grantor. After such automatic termination, upon Grantee's request and at Grantee's expense, Grantor shall execute a quitclaim of such freight easement as to such segment. Grantor may withdraw any abandonment in its sole discretion.

(ii) Offers of Financial Assistance. If Grantor seeks abandonment of any segment of the Property and Grantor receives an Offer of Financial Assistance ("OFA") with respect thereto, Grantor shall promptly notify Grantee in writing. Grantee (or its designee) may, at its option, submit its own OFA in the amount of \$1.00 and Grantor shall accept the OFA submitted by Grantee (or its designee).

(iii) Successors and Permitted Assigns. All of the terms and conditions of this Freight Easement shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any assignment of this Freight Easement shall be conditioned upon the assignee assuming all obligations set forth herein and entering into an Administration, Coordination and License Agreement with Grantee. Grantee hereby consents to the assignment of this Freight Easement to Santa Cruz and Monterey Bay Railway Company ("Short Line Operator"). Notwithstanding any language herein to the contrary, Union Pacific Railroad Company as Grantor shall have the unrestricted right to assign its rights and interest under this Freight Easement to Short Line Operator, and upon Union Pacific Railroad Company's assignment of its rights and interest under this Freight Easement to

Short Line Operator, Union Pacific Railroad Company shall be released and discharged from any further obligation or liability under this Freight Easement and references to "Grantor" hereunder shall then refer to Short Line Operator or any successor to Short Line Operator, as applicable.

(b) The existing eight inch (8") sanitary sewer pipeline and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Holcomb Corporation dated July 27, 1990, identified in the records of Grantor as Audit Number S211235, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(c) The existing eight inch (8") sanitary sewer pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Holcomb Corporation dated July 27, 1990, identified in the records of Grantor as Audit Number S211236, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(d) The existing four inch (4") VCP sewer and four inch (4") copper water pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and James G. Speth dated March 19, 1980, identified in the records of Grantor as Audit Number S204567, and granting certain rights to said Licensee to use a portion of the Line for four inch (4") VCP sewer and four inch (4") copper water pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(e) The existing twenty-four inch (24") storm drain pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing twenty-four inch (24") storm drain pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the twenty-four inch (24") storm drain pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Phillips Driscopipe, Inc. dated April 20, 1995, identified in the records of Grantor as Audit Number S715469, and granting certain rights to said Licensee to use a portion of the Line for twenty-four inch (24") storm drain pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

IN WITNESS WHEREOF, the undersigned have executed this Quitclaim Deed as of _____, 2010.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Assistant Secretary

(SEAL)

By: _____
Title: _____

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION, a public
agency created under California law**

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Counsel

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

On _____, 2010, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF CALIFORNIA)

) ss.

COUNTY OF SANTA CRUZ)

On _____, 2010 before me, a Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the _____, respectively, of SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

(SEAL)

SCHEDULE 1 TO QUITCLAIM DEED

LEGAL DESCRIPTION OF PROPERTY

SCHEDULE 2 TO QUITCLAIM DEED

FORM OF OPTION [To Be Executed in Recordable Form]

1. The portion of the Property between milepost [] and milepost [] (the "**Railbanked Property**") is subject to the effective orders of the Surface Transportation Board ("**STB**") applying Section 8(d) of the National Trails System Act, 16 U.S.C. Section 1247(d). The Railbanked Property shall remain under the jurisdiction of the STB (or its successor agency) pursuant to applicable regulations of said agency for reactivation of freight rail service and for interim trail use. In the event Grantee shall apply to the STB (or its successor agency) to cease railbanking all or any portion of the Railbanked Property, Grantor shall not object to such application.

2. Grantor hereby grants to Grantee an option for a period of 99 years after the date of this Option to acquire Grantor's residual right to reactivate freight rail service on all or any portion of the Railbanked Property. Such option (i) shall be exercisable upon 10 days prior written notice to Grantor after Grantee has obtained regulatory authority to acquire such residual right, and upon tender of \$10 as additional consideration, or (ii) may be waived by Grantee upon written notice to Grantor.

3. If Grantor reactivates freight rail service on any portion of the Railbanked Property, Grantor (i) shall reimburse Grantee for the amount Grantee has paid for the portion of the Railbanked Property in question, including all improvements subsequently constructed thereon, or the then-current market value of the portion of the Railbanked Property in question, whichever is greater, and (ii) shall be solely responsible for the restoration of tracks, ties and other structures necessary for freight rail service.

CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code §27281)

This is to certify that the interest in real property transferred by Quitclaim Deed as of _____, 2010, from Union Pacific Railroad Company, a Delaware corporation, to the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("Grantee"), is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. ____ of Grantee's Commission, adopted _____, 2010, and Grantee consents to recordation thereof by its duly authorized representative.

**SANTA CRUZ COUNTY
REGIONAL TRANSPORTATION
COMMISSION**

Date: _____, 2010

By: _____

Title: _____

APPROVED AS TO FORM:

Counsel